RECORD
AND
BRIEFS

No. 10-1263

Supreme Court, U.S.
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In The

Supreme Court of the United States

DAVID JOHNS BRYSON,

Petitioner,

CITY OF OKLAHOMA CITY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

KENNETH JORDAN
Municipal Counselor

RICHARD C. SMITH*
Assistant Municipal Counselor
200 N. Walker, Suite 400
Oklahoma City, OK 73102
(405) 297-2451 FAX (405) 297-3851
rick.smith@okc.gov
Attorneys for Respondent City
**Counsel of Record*

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RESPONSE TO "QUESTIONS PRESENTED"

The Petition should be denied. Bryson's first two questions have already been answered by this Court in its decisions requiring proof of deliberate indifference of the municipality's policymaker and causation in a failure to train § 1983 case before allowing the claim to go to the jury. Bryson contrarily calls Gilchrist's actions "fraudulent," then claims she made "errors."[1] He seeks to hold the City responsible under *respondeat superior*. His Petition for Rehearing filed in the Circuit "preserves a claim of *respondeat superior* against the City" under § 1983, believing that this Court should reverse *Monell v. Department of Social Services*, 436 U.S. 658 (1978). His "due process" claims ignore that Oklahoma supplied him with adequate post deprivation remedies which supply due process. Further, his claims were time-barred when filed.

The Oklahoma Supreme Court has already held that Gilchrist's similar actions were "misconduct," *i.e.*, not in good faith. Oklahoma law does not authorize an indemnification payment to the employee's judgment creditor. Gilchrist did not seek indemnification after the Judgment against her was entered.

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[1] At p. ii, Bryson claims forensic evidence was produced "fraudulently." At p. 4, he claims that Gilchrist (and not the City) "caused . . . Bryson's wrongful conviction through inaccurate hair and serology evidence. . . ."

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INTRODUCTION

This case involves Bryson's 1983 convictions for sexual assault, his attempts to obtain access to the evidence for DNA testing from 1988 until 1997, his attempt to reverse the convictions based upon those test results, successful in August, 1999, and the continued prosecution by the State until the District Attorney's dismissal of the charges in 2003. His original lawsuit was filed in 2004 and its "thrust" was the denial of access to the evidence post-conviction. *Bryson v. Macy,* 2007 WL 682030, *1, 7 (W.D. Okl.). He dismissed that action and refiled it, asserting two claims, malicious prosecution for a "wrongful conviction" and denial of access. (*Id.* at *1). The Court correctly held that Bryson failed to offer any evidence of deliberate indifference of the City regarding training or supervision of its forensic chemists prior to his convictions and his claim of denial of access was time-barred. The City continues to assert that Bryson's malicious prosecution claim was also time-barred. His claims are procedural due process claims and Oklahoma's post-conviction procedures and tort law provide "due process." The District Court correctly denied Bryson's Application for Indemnification based upon state law.

Bryson's malicious prosecution claim against the City, *i.e.*, lack of quality control – having untrained police officers supervising the tortfeasor without notice of the actor's malfeasance is far more tenuous than the rejected claim against Canton. This claim is founded on negligence, not "deliberate indifference." Unlike Harris in *Canton v. Harris,* 489 U.S. 378

(1989), Bryson was aware of the elements for municipal liability, and had over a year of discovery to produce evidence of Oklahoma City's alleged deliberate indifference but did not.

STATEMENT OF THE CASE

Paragraph 25 of Bryson's May 2004 complaint stated in part that Gilchrist overstated the evidentiary value of hair analysis, but that he did not have sufficient information to allege probable cause was lacking for his arrest and conviction. *Bryson v. Macy*, 2007 WL 682030, *1 (W.D. Okl.). Bryson's 2005 complaint alleged that Bryson was wrongfully convicted based upon Gilchrist's hair analysis (*id.* at *1), and that Gilchrist's "it's been destroyed" statement was a lie. (*Id.* at *2). There were no allegations regarding her serological analysis or that Gilchrist was responsible for his "continued" post-conviction confinement. Defendants moved to dismiss, arguing qualified immunity (except the City); statute of limitations; and that Bryson's claims were procedural due process claims and State law provided due process. No Court has ever addressed this last argument.

Pursuant to Gilchrist's request for representation, in January 2006, the City Council, as required by 11 O.S. § 23-102, but perhaps not by 51 O.S. § 162(A)(1), determined that she was not acting in good faith and in the scope of her employment regarding Bryson, and denied her request.

The Court held Bryson's Complaint alleged two due process claims: malicious prosecution leading to Bryson's convictions[2] (*id.* at *4) and bad faith denial of access to evidence post-conviction for DNA testing. (*Id.* at *5-6). The Court denied qualified immunity and held that the Complaint (except the conspiracy claims and the state claim against the Defendant City) was timely. (*Id.* at *7, 10). Gilchrist Answered and cross-claimed against the City for indemnification. The City denied her cross-claim.

Chief Gonzales appealed the denial of qualified immunity. The Tenth Circuit held the District Court erred in not dismissing him because Bryson failed to allege a claim against him. *Bryson v. Gonzales,* 534 F.3d 1282 (10th Cir. 2008).

The City's dispositive motion and brief objected to Bryson's challenges to Gilchrist's serological analysis as being irrelevant under his 2005 complaint. The Court denied this portion of the City's motion,[3] but sustained it because Bryson failed to offer proof of the City's deliberate indifference prior to his conviction and the denial of access claim was time-barred. Bryson filed a Motion to Reconsider. The City objected. It was denied.

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[2] Contrary to Bryson's claim at p. 26 of his Petition, he, by his allegations, and the Tenth Circuit in *Pierce v. Gilchrist,* 359 F.3d 1279 (10th Cir. 2004) established the relevant time period. (*Id.* at *7, 9).

[3] App. 77-78 at n. 14.

Bryson filed an Application to participate in any hearing on Gilchrist's indemnification claims. The City objected.

Judgment was entered against Gilchrist based upon a Motion of Bryson and Gilchrist, which was not approved by the City Council. (11 O.S. §§ 10-106(3) and 17-201 *et seq.* require Council approval of a Judgment entered against a municipality. 51 O.S. § 162(A)(2) requires that the Council approve any settlement entered against an employee for the employee to receive indemnification). Attached as exhibits to the Motion were Bryson's experts' reports opining that Gilchrist's serological analysis was contrary to her training, incomplete and misleading and proper analysis would have excluded Bryson as being the donor of the crime scene hairs and semen.

On June 23, 2009, the Council settled Gilchrist's disputed indemnification claims for $23,364.29. The Council did not proclaim that Gilchrist was acting in good faith or in the scope of employment.

After entry of the Judgment against Gilchrist, Bryson, not Gilchrist, filed an Application for Indemnification. Gilchrist and the City filed a Stipulation of Dismissal With Prejudice of Gilchrist's claims. The Court dismissed with prejudice all claims made by or that could be made by Gilchrist against the City. The Court denied Bryson "indemnification."

STATEMENT OF FACTS

Bryson's Statement of Facts are incomplete and misleading.

In February-May 1980, Gilchrist interned in the OCPD forensic lab while completing a Bachelor of Science Degree (with a major in Forensic Science). (Bryson refers to some of Gilchrist's grades, but fails to advise this Court her grades improved in her senior year, including "A's" in Medicinal Chemistry and Forensic Science and "B's" in Microbiology, Theoretical Chemistry, Criminology and Health Occupations. In *Connick v. Thompson*, ___ U.S. ___, 131 S.Ct. 1350 (2011), this Court did not refer to the Assistant District Attorney's grades nor did it require the ADA's to be "distinguished" in their academic career. Justice Thomas apparently rejected the dissent's requirement that the ADA's had to enroll in a criminal procedure class. (*Id.* at 1364)). Upon graduation in May, 1980, she was employed as a forensic chemist. She continued her training. She testified that her training period lasted approximately nine months.[4] Melissa Hughes, a/k/a Keith, another OCPD chemist, received similar training. Both were supervised by Janice Davis, the City's senior chemist. The Tenth Circuit acknowledged Davis was an expert in *Moore v. Gibson*, 195 F.3d

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[4] See *2, n. 1, in *Pierce v. Gilchrist*, 2007 WL 162522 (W.D. Okl.) for a description of this on-the-job training. As noted by the District Court at n. 7, App. 60-61, after the briefing cycle, the undersigned reviewed the 1980 assignment logs of the forensic lab. It appeared that Gilchrist's first case was assigned in August 1980. The City notified the Court and Bryson.

1152 (10th Cir. 1999). Davis' training is detailed in *Moore v. State*, 1990 OK CR 5, 788 P.2d 387, 397-98. (Bryson never cited to any criticism of Davis, Hughes, or any other City forensic chemist).

In August 1980 and in February 1981, Gilchrist went to Wraxall's Serological Research Institute ("SERI"), for two separate courses, studying blood and semen stain analysis.[5]

In January-February 1981, Gilchrist went to the FBI Academy to further study blood, hair and fiber analysis. This included training on a manual entitled *Technical and Legal Aspects of Forensic Serology: A Laboratory Manual,* with a part entitled "Technical Aspects of Forensic Serology," sections on testing blood and semen and on "The Rape Case – Special Evidence Consideration." Part two, "Legal Aspects of Forensic Serology" included a section "The Goal of the Expert Witness" subtitled "The Ascertainment of Scientific Truth."

Pamphlets regarding the importance of truthful testimony from two District Attorneys were found in an inventory of Gilchrist's office after her termination. (As was Gilchrist's notebook regarding her FBI training with the test results mentioned at p. 6 of the Petition). OCPD training outlines were found.

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[5] Bryson ignores this training. At p. 11 of his Petition, he states Wraxall is a "competent forensic analyst." At App. 57, Judge Friot quotes from Wraxall's expert report submitted by Bryson, which refers to a portion of her training there.

One dated April 18, 1980, titled "Courtroom Testimony," ends with:

> *THE BASIC STEPS ARE SIMPLE*:
>
> 1. Conduct a proper, complete investigation.
>
> * * *
>
> 6. *ALWAYS TELL THE TRUTH*. (Emphasis in original).

Another, dated March 1981, was titled "The Role of Law Enforcement in the Prosecution of a Rape Case." It advises detectives to "determine (the) complete truth about the incident" and the chemist that the test results could be exculpatory.[6]

During the assault for which Bryson was convicted, the victim bit the penis of her attacker. Afterwards, she assisted with the drawing of a sketch of the assailant. Civic groups were advised and they requested medical providers look for a man seeking treatment for his injured penis. On October 2, 1982, Bryson sought such treatment. Dr. Tillinghast prescribed a painkiller and an antibiotic and advised a rape crisis group of Bryson's injury, who advised the

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[6] This is a description of Gilchrist's training provided prior to this assault. Despite citing to Judge Cauthron's Order in *Pierce v. Gilchrist* in responding to the City's dispositive motion (and herein see p. 16, citing App. 97), Bryson ignored her decision that Pierce (also) failed to show evidence of the City's "deliberate indifference" regarding Gilchrist's initial training. 2007 WL 162522, *5-6.

detective. *Bryson v. Tillinghast*, 1988 OK 6, 794 P.2d 110.

After Bryson's arrest, a photographic lineup was shown to the victim who eventually identified Bryson's photograph as her assailant. Bryson was charged by Information. A preliminary hearing was held. The State called the victim and the detective and rested. Bryson's attorney, Jim Pearson, moved to dismiss, which was overruled. Bryson then called witnesses, including Gilchrist, who testified she had not completed her forensic work as she had not analyzed the hairs but had conducted some preliminary blood work. Pearson again moved for dismissal and was overruled. Bryson was bound over.

By January 28, 1983, Gilchrist had finished her analysis; written her report; and given two originals (one for the defense) to the ADA. Three days later, Pearson filed a Motion for Discovery asking for reports regarding examination of the forensic evidence but not for access to it.

On February 7, 1983, the hair evidence was Court ordered to be produced to Bryson's expert, Max Courtney. The remaining forensic evidence was given to the ADA. Some hairs were produced to Courtney, who examined them in Gilchrist's presence, drew six slides, one numbered 22-123, which was crime scene scalp hair, three of which Gilchrist opined as consistent with Bryson's and three as consistent with the victim's; and therefore, "could have come from" those individuals. Then, Courtney told Pearson he "could

not help him." Pearson believed Courtney agreed with Gilchrist's findings and did not call him as a witness at trial.

On February 7, 1983, Bryson's trial started. At this time, according to Pearson, Gilchrist's reputation had not yet been attacked and "there was no suspicions." The victim, again, identified Bryson as the assailant.[7] Ms. White identified Bryson as the man who lunged at her car in the area of and on the night of the rape. Pearson requested that the Court admonish Gilchrist from testifying that Courtney examined the hairs. Gilchrist testified that various hairs from the victim's clothes and the crime scene were consistent with Bryson's and "could have" come from Bryson; that Bryson was a secretor with type B blood and that such blood type was found in several of the serological fluids and could have come from Bryson; that she could not make a positive identification of a person based on her hair and blood type analysis and that her analysis was not a positive identification. Some forensic evidence, including the rape kit with the vaginal swabs, was admitted. It appears that the hair slides were not.

The State rested. Pearson's demurrer was overruled. Bryson testified that his penis was injured

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[7] Jack Fisher, one of Bryson's lawyers in his criminal case, would later claim that the victim's identification of Bryson was the centerpiece of the criminal case. Bryson continues to ignore this centerpiece now.

when he requested his girlfriend "scrape her teeth on his penis." An alibi was presented. In the State's rebuttal, Bryson's girlfriend denied causing Bryson's injury. Bryson was convicted. He appealed.

The reporter transcribed the testimony, and filed the transcripts and exhibits with the Court Clerk in September, 1983. His convictions were affirmed. *Bryson v. State*, 1985 OK CR 107, 711 P.2d 932. Gilchrist is not mentioned in this opinion. The only reference to the forensic evidence is at 711 P.2d 934, wherein OCCA stated "Serological and hair analysis evidence also linked appellant to the crime." The Court also stated at 935:

> . . . [T]he prosecutrix was positive in her identification. . . . [S]he saw appellant as he entered her car, and was able to observe him several times when the blindfold became loose. In fact, T.T. had an unobstructed face-to-face view of the appellant as he raped her. There is no indication in the record that the prosecutrix was ever anything but positive in her identification of appellant. Soon after the crime, she gave a detailed description of her assailant, which matched the appellant's physical characteristics. . . . the identification was independently reliable.

Judge Bussey, in his concurring opinion, described the evidence against Bryson as "overwhelming." 711 P.2d 936.

The City's 1983 Personnel Policies list false statements as a cause for discipline. During the inventory

of Gilchrist's office, a copy of these Policies with "Joyce" written on it was found.

Evidence of the OCPD's custom of terminating officers who lied in 1984, or were aware of the lies but did nothing to correct them, was produced. *Graham v. City of Oklahoma City*, 859 F.2d 142 (10th Cir. 1988) and *Jarrett v. Gramling*, 841 F.2d 354 (10th Cir. 1988).

Gilchrist's notes of a courtroom testimony seminar, dated September 5, 1985, state in part "*be neutral,* just present the facts – be truthful. . . ." were provided.

In April 1988, Pearson asked Gilchrist about DNA testing of the evidence. She informed him the DA's office would have to make that decision.

In June 1988, Pearson again asked Gilchrist about the forensic evidence. Despite Gilchrist telling him that the evidence had been destroyed, Pearson continued searching for it.

In December 1989, Bryson's father's investigator obtained a Court Order allowing her to examine items in the rape kit. That month, the investigator "discovered" that the forensic evidence admitted at trial was at the Court Clerk's office. She inventoried that evidence.

In April 1991, the OCPD's forensic lab's SOP were "rewritten."[8] They require peer review by the supervisor of the forensic lab, now a "scientist" – not a police officer;[9] proficiency testing; and truthful courtroom testimony.

In May 1991, Bryson's new attorney, Jack Pointer, requested an ADA allow access to the forensic evidence for DNA testing, which was denied.

In January 1992, Pointer demanded the Court Clerk preserve the forensic evidence as he was going to file for DNA testing.

In September 1995, Bryson sought access to the forensic evidence for DNA testing in the District Court.[10] An ADA opposed the application. The Court

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[8] No copy of any prior SOP has been located. Both Bryson and Judge Friot fault the City for not having a copy of any prior lab manual. (P. 10 of the Petition). In *Wallace v. Kato*, 549 U.S. 384, 395 (2007), this Court stated:

> Defendants need to be on notice to preserve beyond the normal limitations period evidence that will be needed for their defense; and a statute that becomes retroactively extended, by the action of the plaintiff in crafting a conviction-impugning cause of action, is hardly a statute of repose.

[9] Gilchrist was promoted to this position in 1990. The Board would later determine she was not fulfilling this responsibility.

[10] No explanation for the delay between 1990 and 1995 was offered by Bryson in this case. However, in the criminal case, Bryson's father testified: "My son and I have done everything we could to pursue this matter since 1990. [We] . . . relied on Mr. Pointer's representations that the application . . . could not be filed until *Taylor v. State*, 1995 OK CR 10, 889 P.2d 319, was

(Continued on following page)

denied it in November 1995. Bryson's belated appeal was originally dismissed by OCCA, however, he was later allowed to file it.

In 1996, Bryson's new attorney, Jack Fisher, learned that DA Macy's office had the evidence sent by the Court Clerk to the DA's storage. In August 1996, Fisher advised Gilchrist by letter he had learned she had custody of the evidence and requested preservation for DNA testing. Gilchrist contacted an ADA who advised her that she should ignore this request because " . . . the attorney must make any request through the District Attorney's office."[11]

In September, 1996, Bryson again sought permission for DNA testing in Court and the forensic evidence admitted at trial was returned to the Lab. An ADA again opposed Bryson's Application. The Judge denied the Application, but ordered that the forensic evidence be retained.

In October 1996, Bryson filed a *mandamus* action in OCCA "seeking access to the evidence for testing." In March 1997, OCCA denied Post-Conviction Relief, granted *mandamus* and remanded the case to

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decided in January of 1995." In *Taylor* OCCA approved the use of DNA test results as evidence.

[11] In *Bryson v. Gonzales*, 534 F.3d 1282, 1289 (10th Cir. 2008), the Court acknowledged that the DA was an independent elected officer, not under the supervision of the chief of police, and stated "It is unsurprising, and certainly not unconstitutional, that the District Attorney would have some influence over decisions of a legal nature, such as retention of evidence."

District Court. OCCA ordered that "the evidence be preserved in its present state . . . " and "This, however, does not prohibit testing by the Petitioner pursuant to an Order of the District Court."

In March, 1997, Gilchrist inventoried the evidence in the presence of Wraxall, an ADA, and others. The Court ordered it sent to Wraxall for testing. Gilchrist did. Wraxall tested some, but not all, of this evidence for DNA and reported that Bryson was not the semen donor.[12]

In May 1997, Bryson again sought Post-Conviction Relief in Court alleging that the DNA results were exonerating "newly discovered evidence."

On May 9, 1997, Gilchrist told DA Macy, regarding Wraxall's report, "At this point, have no biological connection to Bryson."

On November 3, 1997, an ADA requested that three "recently located" hair slides, and other hair evidence be sent to LabCorp for DNA testing, which was unable to obtain sufficient amount of DNA for PCR analysis.

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[12] Wraxall, by his report, affidavit and subsequent testimony in the evidentiary hearing in 1999, stated his results excluded Bryson "if there was no other explanation" for the semen source. In the criminal case, Bryson argued that the other explanation – the victim had undisclosed sex with someone other than her fiancé – was the State's theory. In the civil case, he argued, incorrectly, it was Gilchrist's, the City's and the DA's theory. See pp. 14-15 of the Petition.

In December 1997, a Judge denied the Application, ruling the DNA evidence would not have changed the verdict because of the overwhelming evidence of Bryson's guilt.

Bryson appealed. OCCA remanded for an evidentiary hearing. At the hearing, Fisher stipulated Gilchrist was "an expert" even though those OCCA cases cited by Bryson at p. 16 had been reported. The Court denied Bryson's Application, stating in part "The evidence in this case, notwithstanding the DNA evidence, is overwhelming."

In August 1999, OCCA vacated Bryson's convictions, granting him a new trial.

The OCPD began investigating Gilchrist after *Mitchell v. Ward*, 150 F.Supp.2d 1194 (W.D. Okl. 1999), *rev'd in part, Mitchell v. Gibson*, 262 F.3d 1036 (10th Cir. 2001) was issued.

In September 2000, Fisher filed a Motion for Access to the remaining evidence for DNA testing. (The items Wraxall previously had (except the three hair slides) but did not test).

In March 2001, at the request of then OCPD Chief Berry, Doug Deedrick, an FBI forensic chemist, reviewed Gilchrist's hair analysis in several cases, including Bryson's, and determined that the evidentiary hairs were not consistent with Bryson's reference hairs, and Chief Berry immediately advised DA Macy of "problems" with Gilchrist's hair analysis in this and other cases.

In April 2001, Deedrick's report was given to DA Macy and others. Fisher, on behalf of Bryson, obtained a copy from the State.

On September 25, 2001, Gilchrist was terminated in part because of her work in Bryson's case.[13]

In November 2001, in *State v. McCarty*, Fisher obtained a copy of the Board's Report and the City's evidence against Gilchrist.

In March 2002, Bryson and the State agreed to DNA testing of the "remaining" evidence, which was sent to Wraxall. His March 2003 testing determined that Bryson was not the donor.

In September 2002, Fisher was given a copy of the forensic file in Bryson's case, including all of Gilchrist's notes. (At p. 12 of the Petition, Bryson claims that these notes were produced pursuant to a 2003 Court Order, contradicting p. i).

In May 2003, the State asked that the criminal case be dismissed "based on evidence developed through DNA technology, which raises a doubt of the

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[13] The City provided Gilchrist with a Department Review Board. The Board issued a report outlining her misconduct in this and other cases and found Gilchrist violated City and OCPD policies in this and other cases. At App. 53, Judge Friot cites to the Board Report as Bryson's Exhibit 19. Bryson's use of it judicially *estops* him from claiming that Gilchrist's actions were consistent with City policy and practice. *New Hampshire v. Maine*, 532 U.S. 742 (2001).

defendant's guilt, which is reasonable." The case was dismissed by the State on June 24, 2003.

I. No Evidence Of Deliberate Indifference Or Causation Prior To Bryson's Convictions

In *Oklahoma City v. Tuttle,* 471 U.S. 808, 823-24 (1985), this Court (in its plurality opinion) stated:

> Here the instructions allowed the jury to infer a thoroughly nebulous "policy" of "inadequate training" on the part of the municipal corporation from the single incident . . . , and at the same time sanctioned the inference that the "policy" was the cause of the incident. Such an approach provides a means for circumventing Monell's limitations altogether. Proof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker.

In *Canton v. Harris*, 489 U.S. 378, 385 (1989), this Court stated: "Thus, our first inquiry in any case alleging municipal liability under § 1983 is . . . whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." This Court held that Canton's policy of having untrained supervisors making medical decisions regarding injured detainees was not sufficient to establish the newly announced deliberate indifference

element of municipal liability in a § 1983 failure to train case. (*Id.* at 381-82, 392). If "untrained supervisors" actually denying medical care to arrestees is not sufficient for deliberate indifference, then the alleged failure to have quality control of a forensic lab is also not sufficient. Notice that an employee would ignore her training and falsify evidence is required, otherwise municipal liability would be based upon *respondeat superior*.

At p. 23, Bryson states "If 'deliberate indifference' is to be the standard. . . ." This Court held in *Canton v. Harris*, 489 U.S. 378 (1989) that deliberate indifference *is* the standard in a failure to train case. *Connick v. Thompson*, ___ U.S. ___, 131 S.Ct. 1350, 1360 (2011). (Emphasis added). In *Connick* at 1350, 1355, 1358-60, this Court reversed the Fifth Circuit's affirmance of a jury verdict based upon the prosecutor's single incident of failing to provide *Brady* (*v. Maryland*, 373 U.S. 83 (1963)) material to the defendant. This Court reaffirmed a municipality could not be liable because of *respondeat superior*; a failure to train was the most nebulous of all municipality liability theories; proof of deliberate indifference of the municipality is necessary which usually requires proof that because of repeated constitutional violations the need for further training was plainly obvious to the city's policymakers;[14] and that there must

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[14] At p. 19 (in bold) and at p. 20, Bryson finally concedes his is the first (alleged) "wrongful conviction." (Yet, at pp. 7-8, he mentions the OSBI's criticisms of several of Gilchrist's contemporaneous cases). Since the OCPD Department Review Board

(Continued on following page)

be a direct causal link between the (alleged) failure to train and the constitutional violation. This Court held that "contemporaneous or subsequent conduct" could not establish the pattern of violations required to give notice to the City. (*Id.* at 1359-60). Justice Thomas refers to on-the-job training actually provided by the DA. (*Id.* at 1362). There is no mention in Bryson's Petition of Gilchrist's on-the-job training with the City Forensic Lab. He fails to advise the Court of all her training.[15] Justice Thomas also cites to standards in place in 1984, the time of the constitutional tort (*id.*), contrary to Bryson's "expert" who cited to publications and standards published after Bryson's convictions. In *Connick*, at 1363, Justice Thomas "explains" this Court's "hypothetical" from *Canton* (489 U.S. 390, n. 10), that a municipality could be liable for the first constitutional tort as police recruits would have no knowledge of the constitutional limits on the use of deadly force and need to be provided such training before being giving a firearm. As the Tenth Circuit held, it was not "highly predictable or plainly obvious that a forensic chemist would decide

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Report, the OSBI report, and all the other adverse publications regarding Gilchrist's actions, only three criminal defendants have filed lawsuits because of Gilchrist's actions – Mr. Pierce (her actions occurred in 1986), Mr. Bryson, and Mr. McCarty (for her actions in 2000).

[15] Also ignored by Bryson was the victim's detailed description of the assailant which matched Bryson, her identification of him as the rapist, and the injury to his penis. He continues to ignore some of the hair evidence was produced, pretrial, to his own expert who agreed with Gilchrist.

to falsify test reports and conceal evidence if she received only nine months of on-the-job training and was not supervised by an individual with a background of forensic science." *Bryson v. City of Oklahoma City*, 627 F.3d 784, 789 (10th Cir. 2010). Bryson ignores that this Court stated that the "wrongful conviction" in *Connick* was caused by the ADA's "willful suppression of evidence he believed to be exculpatory in an effort to railroad Thompson." (Justice Scalia's concurring opinion, *id.* at 1368).[16]

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[16] Justice Scalia further stated that the bad faith, knowing violation of *Brady* by the ADA "could not possibly be attributed to a lack of training." (*Id.* at 1369). Justice Ginsburg's dissenting opinion stated at 1382, "He never disciplined or fired a single prosecutor for violating *Brady*." The first Court to hold that Gilchrist lied when testifying was Judge Thompson in *Mitchell v. Ward*, 150 F.Supp.2d 119 (W.D. Okl. 1999). Her conduct was investigated. She was fired for violating City policy by her actions in that case, Bryson's and others. Bryson was given the Board's Report in 2001 and the evidence to support it. He used that Report in this case (see, for example, p. 17 of the Petition), ignoring the Board's findings that Gilchrist violated City, OCPD, and the Lab's policies. The City used that Report to deny Gilchrist's unemployment claim (*Gilchrist v. Board of Review*, 2004 OK 47, 94 P.3d 72, *cert. denied*, 543 U.S. 1001 (2004)), and to defend it and its employees from her § 1983 lawsuit. *Gilchrist v. Citty*, 71 Fed.Appx. 1 (10th Cir. 2003) and 173 Fed.Appx. 675 (10th Cir. 2006). Mr. McCarty used the Review Board's determination that Gilchrist, in 2000, destroyed or intentionally lost critical hair evidence to reverse his murder conviction. *McCarty v. State*, 2005 OK CR 10, 114 P.3d 1089. Bryson cites to the OSBI's 2002 findings, ignoring that the City has never agreed with its findings and, more importantly, no person has ever been identified by the State of Oklahoma as being "wrongfully convicted."

As Justice Thomas stated in *Connick* at 1359:

> "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Bryan Cty.*, 520 U.S., at 410 . . . Thus, when city policymakers are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose to retain that program. *Id.* at 407. . . .

As Pearson testified, at the time of Bryson's trial, Gilchrist's reputation had yet to be attacked and there [were] no suspicions. After his Judgment against Gilchrist, Bryson changed his assertions, claiming that instead of Gilchrist fraudulently and with malice, manufactured evidence or lied about its existence, made "errors," "mistakes," or was incompetent. Errors (negligence) do not support the elements of a malicious prosecution claim (*Pierce v. Gilchrist*, 359 F.3d 1279 (10th Cir. 2004)) or a denial of access to evidence claim (*Arizona v. Youngblood*, 488 U.S. 51 (1988)). Bad faith is necessary. *Pierce* at 1291-96 and *Youngblood* at 58. *Bryson v. Macy*, 2007 WL 682030, *4-6 (W.D. Okl.).

Further, in *Canton*, this Court stated at 489 U.S. 378, 390-91: "That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty

training program. It may be, for example, that an otherwise sound program has occasionally been negligently administered."

At p. 22, Bryson cites two Sixth Circuit cases, claiming they are contrary to the Tenth Circuit opinion. Ironically, *Gregory v. Louisville*, 444 F.3d 725 (6th Cir. 2006), also concerns a claim of fabricated evidence by a forensic expert in 1993. The Circuit Court held that there was no evidence of liability of the lab's supervisor. 444 F.3d 737-78; 744-75; 747-78; and 751-52. Apparently, there was "no quality control" in that lab as of 1993 or the supervisor, according to Bryson's expert, would have caught the fraud of the forensic expert. There is no reference to *any* quality control of that lab in that entire opinion. Apparently, Bryson cites that opinion and the second, *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009), for the cities' liability for failure to train its police officers[17] on their *Brady* obligation "to turn over exculpatory material to the prosecution," yet fails to advise the Court that the note he refers to at pp. 24-25, is Gilchrist's note regarding her conversation with District Attorney Macy, advising him after the 1997 DNA test results, there was no biological evidence to connect Bryson to the crimes. She complied with *Brady* (if it applies post trial), but the prosecution continued. At p. 23, Bryson cites two cases, neither of which deal with a

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[17] Bryson repeatedly refers to "police" training. Gilchrist was not a police officer. She was a civilian employee of the City assigned to the OCPD Forensic Lab.

forensic lab or lack of quality control. *Young v. City of Providence*, 404 F.3d 4 (1st Cir. 2005), deals with an "always on-duty, always armed" policy, which resulted in the death of an off-duty police officer. The Court imposed liability on the city, like the Tenth Circuit did in *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000), for a failure to train officers regarding this policy, consistent with n. 10 in *Canton*. In the other case, *Sarus v. Rotundo*, 831 F.2d 397 (2nd Cir. 1987), the Court reversed a jury verdict against the city holding the plaintiff failed to offer proof of a failure to train. Neither case supports Bryson's claim that there is a split of the Circuits.

The City presented evidence regarding Gilchrist's training, including on-the-job training. The Court held that the City's training/supervision may have been deficient, apparently because of the length of on-the-job training and because of the failure to have "scientist" supervisors.[18] However, the Court held that Bryson failed to submit any evidence of the City's deliberate indifference prior to his conviction, *i.e.*, failed to show a prior pattern of unconstitutional conduct of any City chemist, including Gilchrist. He failed to show that Gilchrist was instructed to manufacture inculpatory evidence or ignore exculpatory evidence. Instead, she was trained on the analysis of forensics and to tell the truth.

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[18] This finding ignores DeLaughter's testimony he relied upon the senior chemists – including Janice Davis, to ensure the chemists were performing their jobs satisfactorily.

Bryson complains that the Court did not "analyze" the opinion of Dr. Lucas.[19] (Petition, p. 11). At oral argument in the Circuit, the undersigned advised Bryson's attorney that this was incorrect. At App. 61, Judge Friot refers to Bryson's Exhibit 1, which was Lucas' report. See also n. 13, App. 77. The Amended Order at App. 62-63 lists perceived shortcomings of the lab based on the testimony of Deputy Chief DeLaughter (a captain at the time he was a supervisor of the lab) and on Gilchrist's deposition. These "shortcomings" (as are Lucas' criticisms) are acts of negligence, which do not support municipal liability. *Board of County Commissioners v. Brown,* 520 U.S. 397, 407 (1997). Peer review and proficiency testing were not required in 1982 or 1983. Peer review does not require that a second analyst microscopically compare the reference hairs to the suspect hairs.[20] Bryson ignores that to stop a person who manufactures inculpatory evidence or fails to disclose exculpatory evidence, and denies, in bad faith, the existence of evidence, another scientist would have to conduct the same tests, monitor all conversations, and all

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[19] Dr. Lucas stated in his report: "I have never actually performed serological or hair examination and do not consider myself an expert in these disciplines." His report not only repeatedly faults Gilchrist's opinions in those areas (which Bryson repeats, in part, at p. 9), it also faults the City for not having peer review by a *trained* scientist.

[20] Peer review is now known as technical review. Lucas stated: "It does not require re-examination of the actual items."

courtroom testimony. Lucas never opined that was necessary.

OSBI Agent Perkins[21] testified that at the time of McCarty's 1986 trial, the OSBI did not have a peer review process; did not start using peer review until the early 1990's, and that his first proficiency test was in 1987. Bryson produced no evidence requiring proficiency tests or peer review in 1982 or 1983, only that it was a good idea. Lucas' report stated monitoring testimony became a standard practice for accreditation by the late 1980's; he cited to a 2005 publication regarding peer review; and a 2000 publication regarding on-the-job training.

In any event, as this Court stated in *Connick*, 131 S.Ct. 1363:

> As the Court said in *Canton*, "[i]n virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident." 489 U.S., at 392, . . . citing *Tuttle*, 471 U.S., at 823, . . . (plurality opinion)). . . . But failure-to-train liability is concerned with the substance of the training, not the particular instructional format. The statute does not provide plaintiffs or courts *carte blanche* to micromanage local governments throughout the United States.

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[21] One of OSBI's agents who reviewed Gilchrist's work.

And at 1365:

> In fact, Thompson had to show that it was *so* predictable that failing to train the prosecutors amounted to *conscious disregard* for defendants' *Brady* rights. See *Bryan Cty.*, 520 U.S., at 409, . . . , *Canton, supra,* at 389, . . . He did not do so.

Neither did Bryson.

II. Post-Conviction: No Direct Causal Link

Bryson claims that the City is somehow responsible for the continued prosecution of Bryson after his convictions. The State of Oklahoma prosecuted the criminal case and defended the convictions on appeal. The DA, not the City, is responsible for the prosecution of felonies. 19 O.S. §§ 215.4, *et seq.*, 11 O.S. § 14-111. All Bryson has ever argued was that the City should have done something after OCCA criticized Gilchrist in *McCarty v. State,* 1988 OK CR 271, 765 P.2d 1215 and *Miller v. State,* 1991 OK CR 6, 809 P.2d 1317. Nothing in those cases suggested that her work in other cases should have been investigated. Bryson ignores that OCCA accepted Gilchrist's testimony in *McCarty v. State,* 1995 OK CR 48, 904 P.2d 110; *Mitchell v. State,* 1994 OK CR 70, 884 P.2d 1186; and *Pierce v. State,* 1990 OK CR 7, 786 P.2d 1255.[22]

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[22] By the time of these decisions, OCCA was aware of SWAFS' decision regarding Gilchrist: it is referred to in *McCarty v. State,* 765 P.2d at 1219. The Attorney General of Oklahoma

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The City investigated Gilchrist in 1999-2001. The Review Board determined that Gilchrist's work in this and other cases was contrary to her training and City and OCPD policies. The DA was made aware that her work in this case had been questioned and of her termination. The prosecution of Bryson continued. Bryson, at p. 26 of his Petition, cites to *Pierce v. Gilchrist*, 359 F.3d 1279 (10th Cir. 2004), for support of his "continued confinement" cause of action but ignores the probable cause requirement, which " . . . is central to the common law tort, because not every arrest, prosecution, confinement, or conviction that turns out to have involved an innocent person should be actionable." (*Id.* at 1294). It is clear that the Court is discussing confinement from arrest until conviction, not afterwards. (*Id.* at 1291-93). Just the mere order of the Court's words should have advised Bryson of this meaning of "continued confinement." His arguments are a smokescreen as when the DNA test results came back in 1997 as not Bryson's, the DA was advised, yet "the prosecution" continued. When OCCA reversed Bryson's conviction in 1999, the prosecution continued. When the City terminated Gilchrist in September 2001 and advised the District Attorney of its reasons, including her faulty hair analysis in

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was aware of it: his office represents the State in OCCA and *habeas* cases. The DA's office was aware of it: his office retried McCarty and filed several motions in *limine* in other cases, seeking an order prohibiting the defendant from mentioning SWAFS' decision. See, for instance, *Mitchell v. State*, 884 P.2d at 1197-98.

this case, the prosecution continued. Two things are clear: even if Gilchrist was investigated in 1986 and terminated, the State would have continued prosecuting Bryson, and he would still argue that the City was responsible. Bryson has never explained how the City was to reverse Bryson's convictions, stop the State from opposing his attempts for access to the evidence or from prosecuting him. There is no direct causal link between the City's alleged inaction and Bryson's continued confinement.

A. Denial Of Access

Bryson finally does not challenge Judge Friot's decision that his original claim, the denial of access, was barred by the statute of limitations. (App. 73-74). In *District Attorney's Office for Third Judicial District v. Osborne*, ___ U.S. ___, 129 S.Ct. 2308 (2009), this Court rejected a federal denial of access post-conviction claim, holding that the States were in a better position to determine under what conditions a convicted person was entitled to access. Bryson utilized the State's post-conviction proceedings, obtained access to this evidence, and used those results to obtain reversal of his convictions.

The Court's Grant Of Judgment Was Correct On Other Grounds

1. Bryson's Malicious Prosecution Claim Was Also Time-Barred

In *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), this Court stated: " . . . in order to recover damages for allegedly unconstitutional conviction or imprisonment, . . . a § 1983 plaintiff must prove that the conviction . . . has been reversed on direct appeal, ..." And: "But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, ..." (Emphasis the Court's. Footnotes omitted).

As of OCCA's 1999 reversal of Bryson's convictions, there was no "outstanding criminal judgment" against him, and *Heck*'s bar would not be applicable.

Judge Friot held that the statute on Bryson's malicious prosecution claim did not start until the charges were terminated in his favor, *i.e.*, when dismissed in June, 2003 because he faced the same charges without the refiling of a new Information, with the original case number (App. 67-72); and held that the prosecution, by agreeing to the 2002 DNA testing, was still relying on Gilchrist's opinion. (App. 80). With all due respect to Judge Friot, this analysis ignores any "affirmative link" between the City and

his prosecution.[23] After the City fired Gilchrist and advised the DA of the reasons, it could no longer be the reason the prosecution against Bryson continued (if it was after his convictions). Causation is a requirement of a § 1983 action. *Connick,* at 1358, n. 5.

His first action was filed on May 27, 2004, and was not timely because of Oklahoma's two-year statute of limitations. (12 O.S. § 95(A)(3)). *Abbitt v. Franklin,* 731 F.2d 661, 663 (10th Cir. 1984) (*en banc*). 12 O.S. § 100 does not "save" an untimely initial lawsuit.

2. Probable Cause To Prosecute

In *Pierce v. Gilchrist,* 359 F.3d 1279, 1294-95 (10th Cir. 2004), the Tenth Circuit stated:

> On remand, he will bear the heavy burden of showing that Ms. Gilchrist's falsification of inculpatory evidence or suppression of exculpatory evidence was necessary to the finding of probable cause: that without the falsified inculpatory evidence, or with the withheld exculpatory evidence, there would have been no probable cause for his continued confinement or prosecution. *Stewart v. Donges,* 915 F.2d at 582 n. 13; *Wolford,* 78 F.3d at 489; *Taylor,* 82 F.3d at 1562.

In *Baker v. McCollan,* 443 U.S. 137, 145 (1979), this Court stated: "The Constitution does not guarantee

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[23] And the victim's identification of Bryson.

that only the guilty will be arrested. If it did, § 1983 would provide a cause of action for every defendant acquitted – indeed, for every suspect released. . . ."

The determination of the Judge at Bryson's preliminary hearing,[24] without Gilchrist's alleged fraudulent testimony, establishes probable cause to prosecute Bryson existed. In *Pierce v. State,* 786 P.2d 1255 at 1266, OCCA stated: "We have repeatedly held that a conviction for rape may be had on the uncorroborated testimony of the prosecutrix, or on slight corroboration, where the testimony of the prosecutrix is not inherently improbable or unworthy of belief." OCCA held that Ms. Taylor's identification of Bryson was more than sufficient for probable cause in his appeal. *Bryson v. State*, 711 P.2d at 935. Bryson ignores his claim that the victim's identification of him as the assailant was the centerpiece of his convictions.

3. Adequate State Remedies

Bryson argues his claims are due process claims, without specifying which type. This Court rejected a substantive due process malicious prosecution claim in *Albright v. Oliver,* 510 U.S. 266, 274-75 (1994). Oklahoma allows a wrongful conviction tort claim (51 O.S. § 154(B)(1)-(5)), and a malicious prosecution claim against individuals. *Parker v. Midwest City,* 1993 OK

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[24] Judge Friot rejected this argument without discussion of the victim's identification of Bryson. App. 77-79, including footnotes.

29, 850 P.2d 1065. Procedural due process claims are not complete unless the State fails to provide adequate process, which can be post deprivation. *Zinermon v. Burch,* 494 U.S. 113, 127-28 (1990). Neither the District nor the Circuit Court addressed this issue.

III. Bryson Is Not Entitled To "Indemnification"

In *Board of County Commissioners v. Brown,* 520 U.S. 397, 436 (1997), Justice Breyer, in his dissenting opinion, noted:

> Further, many States have statutes that appear to, in effect, mimic *respondeat superior*, by authorizing indemnification of employees found liable under § 1983 for actions within the scope of their employment . . . Okla. Stat., Tit. 51, § 162 (Supp. 1995); . . . . These statutes – valuable to government employees as well as to civil rights victims – can provide for payments from the government that are similar to those that would take place in the absence of *Monell*'s limitations.

Nothing in this opinion suggests that the requirements of an employee be acting in the scope of employment and actually apply for indemnification before their employer indemnifies the employee for a judgment entered against them, would violate "federal public policy" or "federal due process."

Bryson's quarrel is with Oklahoma law. His attempt to manufacture a federal issue by citing to

non-applicable city-union indemnification clauses should be ignored. Those cases cited by Bryson at p. 29 have nothing to do with the City's possible statutory obligations to provide a defense to an employee who is accused of a constitutional violation or pay indemnification to that employee, when she does not request it, after she agrees she manufactured inculpatory evidence, ignored exculpatory evidence and lied about its destruction.

The Oklahoma Supreme Court stated in *Gilchrist v. Board of Review*, 2004 OK 47, 94 P.3d 72, 75, *cert. denied*, 543 U.S. 1001 (2004):

> We hold that Gilchrist's conduct in *Mitchell*, that is knowingly giving false and misleading testimony in a criminal case, constituted "misconduct" sufficient to support the denial of unemployment benefits. . . . Nothing could be more fundamental than the obligation of a forensic chemist employed by a police department to give testimony that is both honest and fair. Only in this way can our criminal justice system itself be regarded as both honest and fair.

Oklahoma Statute 51 O.S. § 162 and Oklahoma City Municipal Code § 2-321 require that a person seeking indemnification be an employee of the City. Bryson is not now, and has not been, a City employee. There is no judgment *against* Bryson. Oklahoma's "public purpose" to compensate those "wrongfully convicted" is in the Governmental Tort Claims Act, 51 O.S. § 154. Oklahoma's "public purpose" to "compensate"

those who are subjected to "malicious prosecution" or harm caused by lies of governmental employees is to allow a lawsuit against the tortfeasor outside the employee's immunity under the GTCA. 51 O.S. § 163(C). Bryson settled such actions against Gilchrist and Macy.

In Oklahoma, the exclusive method for obtaining indemnification of any civil rights judgment against a municipal employee is pursuant to 51 O.S. § 162. This statute requires the application be filed by the real party in interest, *i.e.*, the employee, and no recovery be made under the right of subrogation. 51 O.S. § 162(B)(3) states in part: "The *employee* of the state or a political subdivision must file an application for indemnification within thirty (30) days of final judgment, or the right to seek indemnification shall be lost forever." (Emphasis added).

Gilchrist did not file a claim for indemnification within 30 days of the entry of Judgment against her, instead, she dismissed with prejudice any claim for indemnification she made (pre-judgment) or could have made.

Even if unpublished, the reasoning of the Tenth Circuit in *Lampkin v. Little*, 85 Fed.Appx. 167 (10th Cir. 2004) is applicable. 51 O.S. § 162 is not ambiguous, and under Oklahoma law, a Court is required to give effect to its plain meaning. 85 Fed. Appx. at p. 168. This statute does not require an application to be filed, there are certain requirements for the employee to have fulfilled prior to the award and

" . . . *in no event shall any application be presented nor recovery made under the right of subrogation.*" (Quoting from 51 O.S. § 162. *Id.* at p. 169, emphasis the Court's). The Circuit Court relied upon its published decision in *Lampkin* and held that the purpose of this statute was " . . . 'to lessen the burdens of personal liability that employees may face as a result of their acts as employees.' *Lampkin*, 286 F.3d at 1212." The Court then stated "Accordingly, the *primary* purpose of § 162 is not to ensure that a wronged plaintiff is compensated but to relieve an employee of the burden of paying a judgment should he meet the statutory prerequisites." (*Id.* at p. 169). Additionally, the Court held that under Oklahoma law, a third party beneficiary was prohibited from enforcing a contract unless it clearly appears that it was made for his benefit, and since the purpose of the statute was for the benefit of the employee, the judgment creditor "is not entitled to require the county to indemnify the employee." (*Id.* at p. 170).

One of the prerequisites for the employee to obtain indemnification is a finding of the Court that the employee was acting within the scope of employment, *i.e.*, in good faith. 51 O.S. § 162(B)(4)(c). The District Court held that Bryson's two claims against Gilchrist involve bad faith. (App. 76-83. *Bryson v. Macy*, 2007 WL 682030 *4, 6). In *Parker v. City of Midwest City*, 1993 OK 29, 850 P.2d 1065, 1068, the Oklahoma Supreme Court held that because a malicious prosecution claim requires malice or bad faith of the employee, the political subdivision could not be

liable because of the good faith definition of scope of employment in the GTCA, 51 O.S. §§ 152 now (12) and 153. The Oklahoma Supreme Court has also held that lying is outside the scope of employment. *Gilchrist v. Bd. of Review*, 2004 OK 47, 94 P.3d 72, 75 and *Pellegrino v. State ex rel. Cameron University*, 2003 OK 2, 63 P.3d 535.

Another prerequisite for the employee to obtain indemnification is that she must be acting within applicable policies known to her. 51 O.S. § 162(B)(4)(c). The Review Board established it is not the OCPD nor City policy for an employee to "manufacture" evidence.

Bryson cites to *Oladeinde v. City of Birmingham*, 118 F.Supp.2d 1200 (S.D.N. Dist. Ala. 1999). *Oladeinde* was based upon Alabama, not Oklahoma law. Birmingham had provided its employees with representation prior to and during the trial without a reservation of rights. The employees (the judgment debtors) had joined in the claim of indemnification. Additionally, one of the state statutes at issue authorized the municipality to pay a judgment, if it chose to, if the employees' conduct was "intentional, willful or wanton." (*Id.* at 1203). Lastly, the city involved had initially determined that the employees were acting within the scope of employment. (*Id.* at 1208-09).

The City Council never determined that Gilchrist was acting within her scope of employment, instead, the Council determined Gilchrist was acting outside the scope of her employment. The City's June 2009

action was entering into a contract as allowed by 11 O.S. § 22-101(4) for the settlement of a *disputed* claim. Under Oklahoma law, settlement agreements are generally favored and will be enforced absent fraud, duress, undue influence or mistake. *Russell v. Board of County Commissioners*, 2000 OK CIV APP 21, 1 P.3d 442.

CONCLUSION

Bryson was convicted in February, 1983. Prior to his trial, Gilchrist had obtained a Bachelor's Degree in Science, had been sent to the FBI Academy to study hair and serological analysis and to Wraxall's institute twice to study serological analysis. She had on-the-job training with a qualified expert. Gilchrist was instructed to tell the truth, both in training and by the City's personnel policies. Bryson has no proof that as of February 1983, the City should have been aware that Gilchrist's analysis of the hairs and/or of the serology evidence in any case was manufactured to inculpate the suspect or that she suppressed evidence of innocence. Bryson has no proof that it was City policy to lie. The District Attorney's office and the District Court, not the City (or Gilchrist), denied him access to the forensic evidence, post-conviction.

Gilchrist advised Macy that the DNA results meant "there was no biological connection to Bryson," yet vacation of Bryson's convictions was fought by the DA's office until 1999 when OCCA reversed his

convictions. The DA's office, not the City, continued the prosecution after the reversal until dismissal of the charges in 2003.

The City did take care of its responsibilities. It fired the bad actor, advised the criminal defendants, the DA, the State Attorney General, the OSBI, the FBI, and the U.S. Attorney for this District. How firing the constitutional tortfeasor for malfeasance, leaving her to pay a $16,500,000 judgment, encourages future constitutional violations, is never explained by Bryson.

Bryson's Petition should be denied.

Respectfully submitted,

KENNETH JORDAN
Municipal Counselor

RICHARD C. SMITH*
Assistant Municipal Counselor
200 N. Walker, Suite 400
Oklahoma City, OK 73102
(405) 297-2451 FAX (405) 297-3851
rick.smith@okc.gov
Attorneys for Respondent City
**Counsel of Record*